



August 30, 2013

Federal Maritime Commission  
800 North Capitol Street NW  
Washington, dc 20573-0001

Att: Karen V. Gregory  
Secretary

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OFFICE OF THE SECRETARY  
FEDERAL MARITIME COMM

Subject: *Docket No. 13-05, Amendments to Regulations Governing Ocean Transportation Intermediary Licensing and Financial Responsibility Requirements, and General Duties.*

Dear Ms. Gregory,

The Pacific Coast Council of Customs Brokers and Freight Forwarders Association (PCC), submits these comments in response to the Advanced Notice of Proposed Rulemaking ("ANPRM") May 31, 2013 (78 Fed. Reg. 32946).

#### **Statement of Interest**

The Pacific Coast Council of Customs Brokers and Freight Forwarders Association (PCC), was established in 1980 to further the interests of the professional independent freight forwarders, NVOCC's and customs brokers based on the US Pacific Coast, the nation's largest international trade gateway. The Pacific Coast Council is comprised of the San Diego District Customs Brokers Association, Los Angeles Customs and Freight Brokers Association, Customs Brokers and Forwarders Association of Northern California, Columbia River Customs Brokers and Forwarders Association, and the Customs Brokers and International Freight Forwarders Association of Washington State.

It is the primary goal of the PCC to foster the flow of international trade along the US Pacific Coast, to benefit the economy generally and to assure compliance with statutory and regulatory policy and requirements. The issues raised in this ANPRM significantly affect the business operations of every customs broker and freight forwarder, member of the PCC. These comments are intended to assure that the proposed Rule is consistent with the public interest, and the interests of our members.

### **Endorsement of Comments of NCBFAA.**

The NCBFAA has submitted comprehensive comments on the Proposed Rule. The Pacific Coast Council endorses those comments in their entirety. The PCC will continue to work in concert with the NCBFAA and other organizations which are concerned with, even alarmed by this Proposed Rulemaking.

Rather than reiterate the analysis found in the NCBFAA comments, the PCC wishes to use this opportunity to inform the Commission of our desire to protect the interests of the law-abiding independent licensed freight forwarders and NVOCC's which we represent, and to emphasize some particularly troublesome aspects of the ANPRM.

### **Proposed Regulations Stray Far Beyond the Intended Mark—Personal Effect/Household Goods.**

The Commission invested considerable resources in its investigation of the Household Goods Industry (Fact Finding Investigation 27, dated April 15, 2011). However, the Commission is not using a scalpel to address specific problems of household goods/personal effects OTI's which constitute a small and distinct segment of the much broader OTI industry. Rather, the Commission is wielding a machete to impose unnecessary and burdensome regulations on a much broader industry that is in many cases is unrelated to the movement of household goods. The broad OTI industry facilitates a very significant share of our nation's international commercial cargo traffic. The Commission should focus its efforts on addressing the apparent problem of rogue companies in the personal effect/household goods shipments. It should cease consideration of imposing new and unnecessary burdens on OTI's in the commercial cargo sector which is an essential component our nation's international trade capacity.

### **Imposing Burdens on Small Businesses**

A significant percentage of OTI's conducting our nation's commercial cargo traffic business are small businesses. As seen from the comments of numerous small businesses already submitted in this Proceeding, the detrimental impact of additional costs and burdens would be considerable. For this reason we intend to bring this ANPRM to the attention of the US Small Business Administration.

### **Proposed Rule is Contrary to President Obama's Executive Order 13563**

President Obama's Executive Order 13563, stressed the need to promote "economic growth, innovation, competitiveness and job creation." He added that agencies should:

- "... Identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends."
- "Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs."
- "Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations."

It is difficult to see how the burden and costs imposed by the license renewal requirement are justified. If the Commission wants to know of changes in OTI status, why does this new procedure require a renewal application, as opposed to a simple update notice?

### **Proposed Rule will Require additional Budget and Staffing at The Commission**

As set forth in the NCBFAA comments and those of individual respondents, the required dramatic increase in number of license applications and payments to the Commission, many of which would be mandated under this rule to be in paper format, will require additional staffing and budget. We intend to ask the Office of Management and Budget and Congressional Oversight Committees if this expansion of scope and budget is necessary. We believe this regulatory expansion is unnecessary.

### **The Proposed Rule Denies Due Process**

Considering that the leadership of the Commission features many attorneys, it is surprising that the Commission would consider proposing a rule that would so obviously deny a citizen due process in a proceeding that could result in the termination of that citizen's business and livelihood. The Proposed Rule's mechanism, by which a staff person at the Commission could, without full hearing with rights of discovery, cross-examination or right to cure, revoke the OTI license, is disconcerting.



### **The Proposed Rule is Mean-Spirited**

Upon the departure of the license holder, the Commission would revoke the OTI license, putting a company out of business entirely, unless a replacement licensed holder is identified to the Commission within 15 days. Thus, the family of a man who established and built up an NVOCC would, under this Rule, lose the entire business he had worked his lifetime to establish, which the Commission would shut down unless, during the 2 weeks following his death, they put aside funeral arrangements, viewings and grieving, and immediately begin searching for a replacement; interviewing, vetting and submitting this new leader of the business within the Commissions required 15 days of their husband's/father's death.

### **Increase in the Bond Amount Misses the Mark**

The Proposed Rulemaking nowhere explains why an increase in the bond amount from \$75,000 to \$100,000, is necessary or helpful. In the two examples of an OTI bankruptcy provided, the increase of \$25,000 would have virtually no benefit or impact. Yet the increase will, as a number of Commentators have already stated, increase the costs of staying in business for small business OTI's. Nowhere in the ANPRM does the Commission appear to have considered this additional cost burden, analyzed it, understood it, or justified it.

### **Commission Must Understand Commercial Realities**

As noted, the Commissions concern seems to be with the activities of a number of OTI's specializing in personal effects and household goods. Nowhere in this Proposed Rule does the Commission suggest that there is in fact a problem with the licensing/bonding requirements which apply to the infinitely larger number of OTI's engaged in the complex and sophisticated movement of commercial cargo.

For example, the Rule would require the name of the principle and FMC license number on "all documentation". In most international cargo shipments, there are dozens and often hundreds of "documents" issued by and to or from the OTI, agents, stevedores, cargo owners, vessel operators, railroads, truckers, terminal operators, warehouse operators, etc, etc, etc. Are all these to have the name

of the principle (owner) of the OTI and its FMC license number? None of these parties has ever complained to the Commission that it did not know who the NVO or forwarder is. Again, there is no problem. Why is the Commission proposing a "solution"?

Marine terminal operators issue thousands of dock receipts to hundreds of OTI's – how are they going to place the correct OTI's owner's name and FMC license number on each dock receipt? Keep in mind, these receipts are issued by terminal operators at all US and foreign ports, many, not in English. The Commission has not explained how this requirement would work with regard to dock receipts, or why it is even necessary or helpful.

### **For Commercial Cargo Movements, the OTI Bond is Rarely Subject to Claims**

The Commission needs to understand that the existence of such bonds rarely becomes relevant with respect to the international movement of commercial cargo. Notwithstanding the vast amount of cargo that is handled by OTIs, most shippers of commercial cargo don't have these problems and have no occasion to make claims against OTI bonds. But, commercial shippers are insured against cargo loss and damage; OTI's have both cargo liability and Errors & Omissions ("E&O") insurance coverage to protect their customers in the event some mishap does occur.

### **Notification**

The ANPRM would impose significant sanctions on any OTI failing to seek renewal in a timely fashion, including possibly suspending or canceling the company's license. If this is what is at stake, the Commission should surely use a more certain means of communication than email. In fact, the Commission requires hard paper and 6 paper copies just for submission of the Comments on this ANPRM. Surely when an OTI's business and livelihood is at stake, the Commission might reciprocate in assuring adequate communication.

### **Qualifying Individual- Creating Uncertainty**

The Proposed Section 515.16 adds a number of highly subjective basis by which a license can be suspended or revoked. These appear to be highly arbitrary, including that the licensee is "not qualified" to

provide service. This, combined with the lack of due process in the contemplated revocation procedure, is worrisome.

## **Conclusion**

The Pacific Coast Council and its members believe that compliance with US statutory and regulatory requirements is vital to assuring an equitable international cargo environment. To the extent that there are "bad-actors" it is appropriate that the Commission utilize its resources to identify them, and to either bring them into compliance or remove them from the trade. This not only protects the public, but provides a fair and level playing field for the vast majority of OTI's who are compliant with FMC regulation as well as all other federal, state and local requirements.

Unfortunately, the Commission has thus far only accomplished a part of this important initiative. It has in FFI 27, identified "bad-actors", namely a number of OTI's in the personal effect/household goods business. However it has failed to propose a solution targeting those identified entities. Rather, the ANPRM would impose a very broad, intrusive, expensive, burdensome, and unrealistic regime of licensing and oversight on a group far larger than those identified in FFI-27, for which the Commission has at no point stated the need.

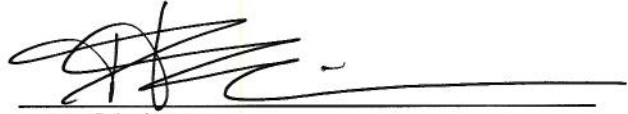
It is also apparent in this Rulemaking that the Commission is not adequately informed of the commercial realities of the highly complex international movement of commercial cargo. The customers of the OTI's in the household good business are significantly different than the more sophisticated commercial cargo interests which are the customers of most OTI's. The means by which customers find and establish relationships with OTI's in the household goods business is far different than in the commercial cargo business. The relationships between the customers and the OTI's are dramatically different as between household goods, and commercial cargo. For household goods it is often a "one off" engagement, while commercial cargo relationships between the cargo owner and the OTI extend for years, even decades. For household goods the OTI bond may be the primary avenue for redress of the customer's injury; for commercial cargo, it is almost never accessed, because cargo and other insurance are standard.



The PCC appreciates the opportunity to convey its views. At the same time, the PCC considers this Proposed Rule sufficiently threatening that we will continue to engage to bring the shortcoming of this proposal to the attention of other federal agencies with jurisdiction as well as our elected officials.

We request that the Commission retract the Proposed Rulemaking.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Peter Friedmann', written over a horizontal line.

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On behalf of the Pacific Coast Council for  
Customs Brokers and Freight Forwarders  
Association Inc.

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